

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ZEAVISION, LLC,)
Plaintiff,) Case No. 4:21-cv-01352
v.) JURY TRIAL DEMANDED
BAUSCH & LOMB INCORPORATED,)
Defendant.)

COMPLAINT

Plaintiff ZeaVision, LLC (“ZeaVision”) states as follows for its Complaint against Defendant Bausch & Lomb Incorporated. (“Bausch & Lomb”):

BACKGROUND AND NATURE OF THE ACTION

1. ZeaVision is a market leader for oral vitamin formulations that promote eye health. ZeaVision has spent more than 20 years on research and innovation, and has pioneered the use of zeaxanthin, a natural antioxidant and photo-protectant, for eye health in the field of pharmacology and nutritional supplements.
2. ZeaVision invested substantial time, money and research in developing oral formulations of “ocular-active nutrients” that can act in a synergistic and potentiating manner with zeaxanthin. The innovative nature of ZeaVision’s inventions has been recognized and appreciated not only from a consumer and retailer standpoint, but also by the United States Patent and Trademark Office (“USPTO”), which on November 16, 2021, issued U.S. Patent No. 11,173,133 (“the ‘133 patent”) to ZeaVision.
3. This is an action for patent infringement under the patent laws of the United States, Title 35 of the United States Code, arising from Bausch & Lomb’s direct and indirect

infringement of the ‘133 patent by its manufacture, use, offer for sale, sale and/or importation into the United States of products that contain “ocular-active nutrients” that can act in a synergistic and potentiating manner with zeaxanthin to protect and/or restore eye health.

4. ZeaVision seeks injunctive relief to stop Bausch & Lomb’s infringement and monetary damages in an amount to be determined at trial. Further, ZeaVision seeks to recover all other recoverable fees and costs.

PARTIES

5. ZeaVision is a Delaware limited liability company with a principal place of business at 716-I Crown Industrial Court, Chesterfield, Missouri 63005.

6. Upon information and belief, Bausch & Lomb is a New Jersey corporation with at least three regular and established places of business in Missouri located in this judicial district.

JURISDICTION AND VENUE

7. ZeaVision’s claims arise under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* Subject matter jurisdiction exists pursuant to 28 U.S.C. §§ 1331 and 1338(a) (patents).

8. This Court has personal jurisdiction over Bausch & Lomb. Upon information and belief, Bausch & Lomb owns, uses, or possesses physical places of business in this judicial district located at 499 Sovereign Court, Ballwin, Missouri 63011, 3845 Corporate Centre Drive, O’Fallon, Missouri 63368 and 3365 Tree Court Boulevard, St. Louis, Missouri 63122. Bausch & Lomb is registered to do business in the state of Missouri and with the Missouri Secretary of State under charter No. F00010319. Upon information and belief, Bausch & Lomb has employees in Missouri. On information and belief, Bausch & Lomb hires and directs contractors

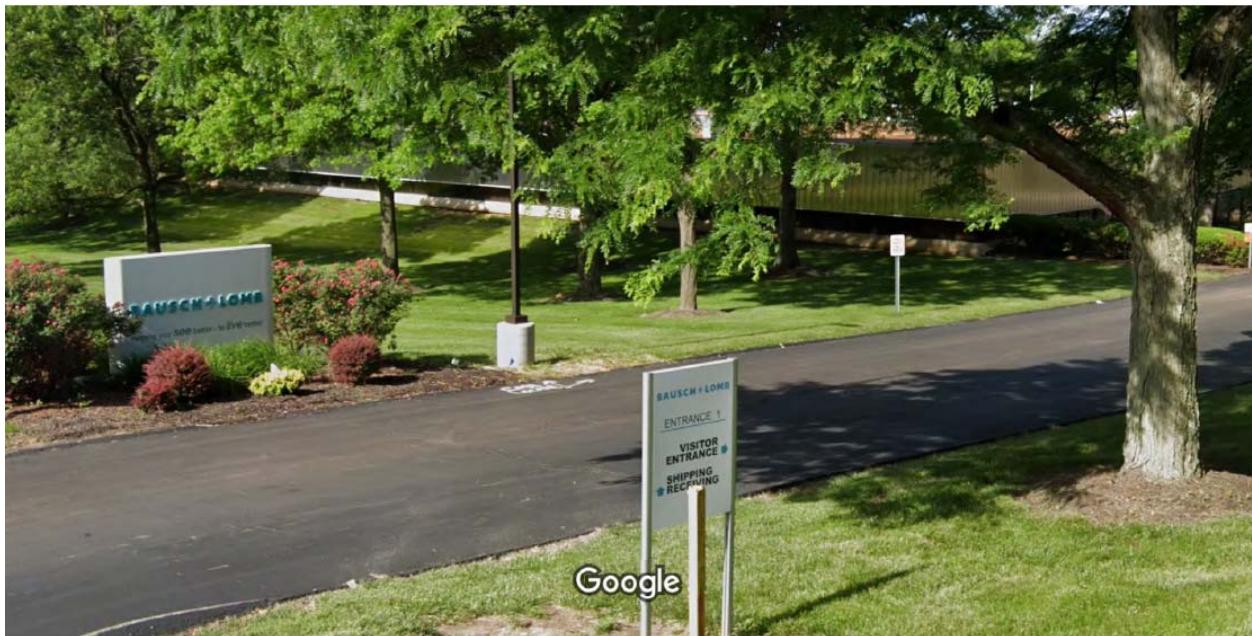
and/or agents in Missouri. Upon information and belief, Bausch & Lomb has substantial annual sales of Bausch & Lomb products in Missouri.

9. Bausch & Lomb has also committed the acts of infringement complained of herein in Missouri, including but not limited to the making, using, selling, or offering for sale infringing products accused herein, and directed its infringing products at residents in the State of Missouri and in this judicial district. ZeaVision's claims arise out of or relate to Bausch & Lomb's infringing activities in Missouri. For example, Bausch & Lomb has sold and offered for sale infringing products in Missouri, including in this judicial district.

10. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b) because Bausch & Lomb has committed acts of infringement in this judicial district where the infringing product can be found, and has at least three regular and established physical places of business in this judicial district located at 3845 Corporate Centre Drive, O'Fallon, Missouri 63368; 499 Sovereign Court, Ballwin, Missouri 63011 (depicted below); and at 3365 Tree Court Boulevard, St. Louis, Missouri 63122 (depicted below).



Bausch & Lomb, 499 Sovereign Court, Ballwin, Missouri 63011



Bausch & Lomb, 3365 Tree Court Boulevard, St. Louis, Missouri 63122

11. Bausch & Lomb also does business in this judicial district through a permanent and continuous presence here. Upon information and belief, Bausch & Lomb owns real property located in this judicial district, has employees at its facilities in this judicial district, and pays contractors and/or agents in this judicial district. On information and belief, Bausch & Lomb has employees and pays contractors and/or agents in this judicial district who work with the infringing products in this judicial district, and who oversee and conduct installation of the infringing merchandising systems in retail stores, such as Walgreens.

FACTS COMMON TO ALL COUNTS

ZeaVision

12. ZeaVision is a leading manufacturer and distributor of orally-ingested formulations for treating or preventing eye disease and vision problems and sells its orally-ingested formulations throughout the United States.

13. ZeaVision has achieved a great deal of commercial success with its orally-ingested formulations, and has sold and continues to sell such products, through to households across the nation.

The Problem ZeaVision Solved

14. Currently, there are numerous different dietary supplements, under hundreds of different brand and product names, that are being marketed to those concerned about eye health. Consumers who are concerned with eye health are faced with a number of competing products to address deteriorating vision due to aging, specific diseases, infections or injuries.

15. In the 1990's, the National Eye Institute carried out the Age-Related Eye Disease Study (AREDS) to test the efficacy of vitamins C and E, zinc, and beta-carotene to protect against macular degeneration. The macula is a small yellowish circle located in the very middle

of the retina that provides the eye's fine resolution abilities. If the macula degenerates, sometimes caused by exposure to high energy blue light, a person's vision may deteriorate. In 2001, according to Bausch & Lomb's website, the National Eye Institute concluded its testing and reported that the AREDS formulation brought about a reduction in risk of age-related macular degeneration (AMD) progression in those individuals with moderate to advanced forms of AMD.

16. In 2006, the National Eye Institute sought to improve the original AREDS formulation that included vitamins C and E, zinc, and beta-carotene. As part of this second wave of testing, which became known as the AREDS-2 study, the beta-carotene was removed, and zeaxanthin and lutein were added. One of the reasons for the examination was growing concerns regarding beta-carotene interactions by current or former smokers. Specifically, beta-carotene was shown to increase the risk of lung cancer in smokers. By 2013, the AREDS-2 test results were revealed and showed a further reduced risk for the AREDS-2 formula as compared to the original AREDS formulation. *Unlike the original AREDS formulation, the AREDS-2 formulation included zeaxanthin as one of its primary components and removed the beta-carotene.* According to Bausch & Lomb's website, the NEI continues to recommend the AREDS 2 formula to reduce the risk of progression of moderate to advanced AMD.

17. ZeaVision invested significant resources in the development of new inventions (including the inventions of the '133 patent) on nutritional formulas that included zeaxanthin to help protect the user's eyes against AMD and from the harmful effect of blue light. In 2003 (*i.e.*, prior to the AREDS-2 study), ZeaVision applied for and received a United States utility patent on one of its oral formulations of ocular-active nutrients that included zeaxanthin. The '133

patent is related to and claims priority back to ZeaVision's original 2003 patent filing.

ZeaVision has other pending patent applications.

ZeaVision's '133 Patent

18. ZeaVision applied for patent protection with respect to the "ocular-active ingredients" that can be used in a synergistic manner with zeaxanthin, which resulted in the issuance of the '133 patent on November 16, 2021. ZeaVision owns the '133 patent. The '133 patent claims priority back to at least 2003.

19. The '133 patent is valid, enforceable, and duly issued in compliance with Title 35 of the United States Code. True and correct copies of the Issue Notification and Notice of Allowance for the '133 patent (which includes the allowed claims) and Notice of Publication of Application are attached hereto as Exhibit A.¹

20. ZeaVision produces products which are commercial embodiments of the '133 patent. ZeaVision complies with the patent marking requirements of 35 U.S.C. § 287, by, at least, posting this page on the Internet: www.eyepromise.com/about-us/patents/.

Bausch & Lomb's Infringing Activities of the '133 Patent

21. ZeaVision and Bausch & Lomb are competitors in the field of nutritional supplements and pharmaceuticals that relate to orally-ingested formulations for treating and preventing eye diseases and vision problems.

22. Bausch & Lomb manufactures and sells oral zeaxanthin formulations with additional ocular-active ingredients/nutrients. These products include Bausch & Lomb's

¹ The '133 patent issued on November 16, 2021, just before this Complaint was filed. ZeaVision will supplement Exhibit A with a true and accurate copy of the '133 patent as issued.

PreserVision AREDS 2 Formula (mini gels), AREDS 2 Formula Chewable, and AREDS 2 Formula + Multivitamin.

23. Products marked as AREDS 2 on Bausch & Lomb's website do not list beta-carotene as an ingredient.

24. Without ZeaVision's authorization, Bausch & Lomb has made, used, sold, offered for sale, and/or imported into the United States products that infringe at least claim 1 of the '133 patent, either literally or under the doctrine of equivalents. Upon information and belief, Bausch & Lomb has placed and sold the infringing products Bausch & Lomb's PreserVision AREDS 2 Formula (mini gels), AREDS 2 Formula Chewable, and AREDS 2 Formula + Multivitamin across the United States.

**COUNT I
BAUSCH & LOMB'S INFRINGEMENT OF THE '133 PATENT**

25. ZeaVision incorporates by reference, as if fully set forth herein, each preceding paragraph of this Complaint.

26. On November 16, 2021, the United States Patent and Trademark Office duly and legally issued the '133 patent.

27. The '133 patent is titled "zeaxanthin formulations with additional ocular-active nutrients, for protecting health and treating eye disorders."

28. ZeaVision is the owner of the entire right, title and interest in and to the '133 patent.

29. Bausch & Lomb has made, used, sold, and/or offered for sale within the United States, and/or imported into the United States, one or more zeaxanthin formulations with additional ocular-active nutrients for the purpose of protecting eye health and treating eye diseases and disorders, including but not limited to Bausch & Lomb's PreserVision AREDS 2

Formula (mini gels), AREDS 2 Formula Chewable, and AREDS 2 Formula + Multivitamin that infringe, either directly or indirectly, literally or under the doctrine of equivalents, at least claim 1 of the '133 patent.

30. Bausch & Lomb has damaged and will continue to damage ZeaVision in an amount to be determined at trial.

31. Bausch & Lomb has notice of the '133 patent as of the service of this Complaint and ZeaVision's assertion of infringement and continues to make, use, sell, and/or offer for sale products which infringe the '133 patent. Bausch & Lomb's infringement is willful.

32. Bausch & Lomb has irreparably injured ZeaVision and such injury will continue unless Bausch & Lomb is enjoined by this Court.

JURY TRIAL DEMANDED

ZeaVision hereby demands a jury on all jury-triable issues.

PRAYER FOR RELIEF

WHEREFORE, ZeaVision prays for judgment against Bausch & Lomb as follows:

- A. Permanently enjoin Bausch & Lomb and any person acting in concert with it from further infringement of the '133 patent pursuant to 35 U.S.C. § 283;
- B. Declare that the '133 patent are valid, enforceable, and infringed by Bausch & Lomb;
- C. Award ZeaVision the profits of Bausch & Lomb, in accordance with 35 U.S.C. § 289, resulting from Bausch & Lomb's infringement of the '133 patent, actual damages to ZeaVision in an amount not less than a reasonable royalty for Bausch & Lomb's infringement, and other damages and relief as allowed by 35 U.S.C. § 284;

- D. Order the removal from the marketplace and destruction of all of Bausch & Lomb's products that infringe the '133 patent;
 - E. Prohibit Bausch & Lomb from further making, using, selling, offering for sale, or importing of all of Bausch & Lomb's products that infringe the '133 patent;
 - F. Treble the damages in accordance with the provisions of 35 U.S.C. § 284;
 - G. Find the case to be exceptional and award appropriate relief thereunder;
 - H. Award ZeaVision reasonable attorneys' fees;
 - I. Award ZeaVision interest and costs;
 - J. Order an accounting of Bausch & Lomb's profits relating to the infringement of the '133 patent ;
 - K. Order Bausch & Lomb to pay ZeaVision damages for Bausch & Lomb's willful infringement, since at least the service of this Complaint;
 - L. Order Bausch & Lomb to report to this Court of its compliance with the foregoing within thirty (30) days of judgment; and
- For such other and further relief that the Court deems just and proper.

Respectfully submitted,

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